



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

HD:hd  
Docket No: 05770-99  
14 March 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: LCDR [REDACTED], CHC, USN [REDACTED]  
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 1 Sep 99 w/attachments  
(2) PERS-311 memo dtd 20 Jan 00  
(3) PERS-85 memo dtd 3 Feb 00  
(4) Subject's ltr dtd 29 Feb 00  
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that the applicable naval record be corrected by removing the original fitness reports for 16 June to 31 October 1996, 1 November 1996 to 31 October 1997 and 1 November 1997 to 15 October 1998, together with letters of transmittal forwarding supplemental reports for the same periods, so that the supplemental reports will be the only reports in his record for the periods concerned. Copies of the contested original reports are at Tabs A, B and C, respectively. Copies of the supplemental reports, each paired with its transmittal letter, are at Tabs D, E and F, respectively. Petitioner further requested removal of his failure of selection before the Fiscal Year (FY) 00 Commander Staff Selection Board. Finally, he requested that he be granted consideration by a special selection board for promotion to the grade of commander.

2. The Board, consisting of Messrs. Lightle, Swarens and Whitener, reviewed Petitioner's allegations of error and injustice on 9 March 2000. Pursuant to the Board's regulations, the majority, Messrs. Lightle and Whitener, determined that the limited corrective action indicated below, to grant the requested fitness report substitutions and remove the failure of selection for promotion, should be taken on the available evidence of record. The minority, Mr. Swarens, recommended the still more limited corrective action also indicated below, to remove the failure of selection only. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies which were available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner contends the three contested original fitness reports for the periods in question, all of which are from the same reporting senior, contain erroneous and unjustly damaging information. He asserts that from June 1996 to early September 1998, his supervisory chaplain repeatedly communicated to Petitioner that he was satisfied with his performance, but that the reporting senior was a strict grader. Petitioner further reports that in September 1998, when he questioned the supervisory chaplain concerning an end of tour award, the supervisory chaplain responded that he had no intention of recommending Petitioner for any award since he already had so many, and that he was dissatisfied with Petitioner's overall performance. Petitioner says when he asked the supervisory chaplain to elaborate, he simply reiterated his judgement. Petitioner maintains that until then, he had reasonably trusted his supervisory chaplain's statement that better fitness reports were unobtainable because the reporting senior was a strict grader. He says it was then that he also learned of the supervisory chaplain's "inappropriate use of his position," and further learned that the supervisory chaplain's undervaluation of Petitioner's performance had resulted from a disagreement between the supervisory chaplain and the reporting senior. He says the three supplemental reports resulted from the reporting senior's investigation, which concluded that he had been a victim of his supervisory chaplain's disagreement with the reporting senior.

d. The three reporting periods in question span Petitioner's entire assignment as the assistant staff chaplain at the reporting senior's base. All three contested original fitness reports were submitted and placed in Petitioner's record before the FY 00 Commander Staff Selection Board convened on 12 April 1999. They report his performance in his current grade. Both the original and supplemental reports reflect he was marked by himself. Each of the three supplemental reports raised some of Petitioner's marks and changed the narrative comments to make them more favorable. In the case of the periods 16 June to 31 October 1996 and 1 November 1996 to 31 October 1997, all four of Petitioner's lowest marks, "3.0" (third best) in blocks 33 ("Professional Expertise"), 36 ("Teamwork"), 37 ("Mission Accomplishment and Initiative") and 38 ("Leadership"), were raised to "5.0" (best) or "4.0" (second best). The supplemental report for 16 June to 31 October 1996 also raised the mark of "4.0" in block 35 ("Military Bearing/Character") to "5.0." The supplemental reports for the periods ending 31 October 1996 and 31 October 1997 also changed Petitioner's promotion recommendation, from "Must Promote" (second best) to "Early Promote" (best). In the case of the period 1 November 1997 to 15 October 1998, which ended with Petitioner's detachment, all four of Petitioner's lowest marks, "4.0" in blocks 33, 36, 37 and 38, were raised to "5.0." The promotion recommendation, which had been "Early Promote" in the original report, was not changed.

e. The transmittal letters forwarding the revised reports provided only limited information as to why the supplemental reports were submitted, stating that the reporting senior had received unspecified new and substantive information that significantly altered his evaluation of Petitioner's performance. These letters now appear in Petitioner's naval record along with the original and supplemental reports. However, the reporting senior also submitted a more specific letter to this Board dated 23 August 1999, Petitioner's enclosure (1) to his application. In this letter, he states he wholeheartedly supports Petitioner's request to correct his fitness report record and enthusiastically supports his request for a special selection board. He says there are occasions when a commanding officer's direct instructions to a senior staff officer can unintentionally result in the undervaluation of the performance of the subordinate; that the reporting senior's senior chaplain did not agree with the reorganization of infrastructure on the reporting senior's base; that the reporting senior feels strongly that Petitioner was the victim of this disagreement; and that the reporting senior regrets he was "not sensitive to [Petitioner's] awkward situation within the Chaplain Corps and his direct supervisor." The reporting senior says he based the original fitness reports "exclusively on information and recommendations provided to [him] by [Petitioner's] supervisory chaplain;" that after Petitioner's departure, he "reevaluated his performance in light of substantive new information and discussions with tenant commanders he directly served;" and that the reporting senior "learned of additional, measurable contributions he made...as well as several initiatives which, if properly documented and reported by his supervisory chaplain, [the reporting senior] would have eagerly supported." He cites specific examples of such initiatives and states their omission alone warrants replacing the original reports with the supplemental reports.

f. All three of the transmittal letters forwarding the supplemental reports reflect the same date, 25 July 1999. Accordingly, the supplemental reports were not available to the FY 00 Commander Staff Selection Board, which met on 12 April 1999. Petitioner says he did not take any action to challenge the original fitness reports until June 1999, when the results of the FY 00 Commander Staff Selection Board were announced, as he felt "it would be unreasonable to allege an injustice until one occurs."

g. Petitioner contends that his failure of selection for promotion is unjust on two grounds. First, his fitness report record before the promotion board included only the contested original fitness reports he considers to be unjust, when he believes it should have included only the later submitted, and substantially more favorable, supplemental reports. Second, he states that the promotion board "included two members whose impartiality would be highly unlikely." He alleges that these members had served with him at the station where he received the contested fitness reports; that one of these had communicated regularly with Petitioner's supervisory chaplain; and that the other had "disapproved of and complained of [Petitioner's] training runs with students," which had been appreciated by the commanders and students, but which the supervisory chaplain directed him to cease.

h. In correspondence attached as enclosure (2), PERS-311, the Navy Personnel Command (NPC) office having cognizance over officer fitness report matters, recommended

that Petitioner's fitness report record remain unchanged. They noted that he did not exercise his opportunity to submit a statement for the record in rebuttal to the contested original reports. They commented that the fact the revised reports are more favorable to Petitioner should have no bearing on whether the originals are retained or removed. They stated that they provide reporting seniors the facility to add material to fitness reports already on file, not replace them; that substitution of the revised reports for the originals should be approved only in unusual circumstances; that the documents now on file, the original reports, transmittal letters and revised reports, provide a complete picture of Petitioner's performance as first evaluated, and then after the reporting senior had the opportunity to reconsider; and that enhancement of chances for promotion is not sufficient reason to remove or change a fitness report. They mentioned that Bureau of Naval Personnel Instruction 1610.10 requires that supplemental material be submitted within two years of the ending date of the report; that the revised report for the period ending 31 October 1996 was received and filed in error, as it was submitted more than two years after the ending date of the original report; and that although this revised report was filed in error, they will not remove it.

i. In correspondence attached as enclosure (3), PERS-85, the NPC office having cognizance over active duty officer promotions, recommended disapproval of Petitioner's request to remove his failure of selection for promotion and afford him consideration by a special selection board. They stated that his official record before the FY 00 Commander Staff Selection Board was complete and included his valid fitness reports for the periods ending 31 October 1996, 31 October 1997, and 15 October 1998. They further stated that while supplemental reports for the periods in question were submitted and accepted after the board's convening, removal of Petitioner's failure of selection cannot be supported, as "The original reports were not provided to the board in error and cannot be assumed as the basis leading to his non-selection." PERS-85 also expressed the opinion that "if the original reports are removed it does not improve the promotion competitiveness of his record amongst his peers to any greater degree than the supplemental reports already provide." Regarding Petitioner's contention about two of the promotion board members, they stated that his "claim that promotion board members were not impartial was unfounded" and that "Previously serving with an eligible does not bar a member from board membership and/or the capability of making an appropriate promotion decision." They concluded that "The board had all the information required for promotion consideration and the records that were presented before the board provided an accurate, complete, and fair portrayal of [Petitioner's] entire career and sufficient information upon which to make a promotion decision." Finally, they noted that board deliberations are secret, so the exact reason for Petitioner's failure of selection cannot be determined.

j. Enclosure (4) is Petitioner's response to the NPC advisory opinions, in which he stresses the information in the reporting senior's letter of 23 August 1999 that the original reports were based exclusively on input from Petitioner's supervisory chaplain, whose undervaluation of his performance resulted from a disagreement between the supervisory chaplain and the reporting senior. He says he did not submit a statement to the contested original reports because the reporting senior had not conducted his investigation which

determined that he had been a victim of the supervisory chaplain's disagreement with the reporting senior. He asserts NPC had previously advised him they had found the reporting senior provided adequate justification for filing the revised report ending 31 October 1996 despite its submission beyond the two-year limit. He argues he did not, as PERS-85 states he did, make a "claim that promotion board members were not impartial," but merely stated that the promotion board "included two members whose impartiality would be highly unlikely." He emphasizes that his performance mark averages in the revised reports are much higher than in the originals, such that the requested substitution would have made a "significant" change in the competitiveness of his record. He states he has been advised that the fitness reports in question would have had "special significance" to the promotion board, as they documented his performance "for an entire tour just prior to the board." He concludes that "A review of [his] application and its time line justifies the Board's favorable consideration."

k. The FY 01 Commander Staff Selection Board is scheduled to convene on 10 April 2000.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the advisory opinions at enclosures (2) and (3), the majority of the Board finds an injustice warranting partial relief, specifically, the requested fitness report substitutions and removal of Petitioner's failure of selection before the FY 00 Commander Staff Selection Board.

The reporting senior's letter dated 23 August 1999 persuades the majority that substitution of the revised fitness reports for the originals is warranted. They are unable to find that Petitioner's selection would have been unlikely, had his fitness report record been so corrected.

The majority recommends denying Petitioner's request for a special selection board. They find his consideration by the next regular board, which is to be convened imminently, with a corrected fitness report record, and with status as an officer who has not failed of selection, will provide him adequate relief.

In view of the foregoing, the majority recommends the following limited corrective action:

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the following original fitness reports and related material, including the three transmittal letters dated 25 July 1999, leaving in the record the supplemental reports covering the same periods:

Date of Report	Reporting Senior	Period of Report	
		From	To
25 Oct 96	CAPT ██████████ SN	16 Jun 96	31 Oct 96
29 Oct 97	"	1 Nov 96	31 Oct 97
14 Oct 98	"	1 Nov 97	15 Oct 98

b. That Petitioner's record be corrected so that he be considered by the earliest possible selection board convened to consider officers of his category for promotion to commander as an officer who has not failed of selection for promotion to that grade.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to this Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

e. That the remainder of Petitioner's application be denied.

**MINORITY CONCLUSION:**

The minority of the Board, having considered all the evidence of record, finds an injustice warranting partial relief, specifically, removal of Petitioner's failure of selection before the FY 00 Commander Staff Selection Board only.

The minority agrees with the advisory opinion at enclosure (2) that Petitioner has not established a basis for removing the contested original fitness reports. The reporting senior's letter dated 23 August 1999 does not persuade the minority that these reports were erroneous or unjust. In the minority's view, this letter appears to be an after the fact rationalization to justify assigning Petitioner higher marks. The minority doubts that the reporting senior was not fully aware of Petitioner's situation with his supervisor.

Nevertheless, and notwithstanding the advisory opinion at enclosure (3), the minority agrees with the majority that Petitioner's failure of selection for promotion should be removed, but for a different reason. He feels Petitioner should have had the benefit of the revised fitness reports before the promotion board. He is unable to find Petitioner's selection would have been unlikely, had his record included both the original and the revised reports.

The minority also agrees with the majority that Petitioner's request for a special selection board should be denied. He finds Petitioner's consideration by the next regular selection board, which is to convene imminently, with a record that includes both the original and

revised reports, and with status as not having failed of selection, will provide him adequate relief.

In view of the above, the minority recommends the following limited corrective action:

MINORITY RECOMMENDATION:

a. That Petitioner's record be corrected so that he be considered by the earliest possible selection board convened to consider officers of his category for promotion to commander as an officer who has not failed of selection for promotion to that grade.

b. That any material or entries inconsistent with or relating to the minority's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to this Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

d. That the remainder of Petitioner's application be denied.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

*Jonathan S. Ruskin*  
JONATHAN S. RUSKIN  
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

  
W. DEAN PFEIFFER

MAJORITY REPORT

Reviewed and approved: Charles L. Tompkins

Charles L. Tompkins  
Deputy Assistant Secretary of the Navy  
(Personnel Programs)

MINORITY REPORT

~~Reviewed and approved:~~ \_\_\_\_\_



**DEPARTMENT OF THE NAVY**

**NAVY PERSONNEL COMMAND**

**5720 INTEGRITY DRIVE**

**MILLINGTON TN 38055-0000**

5770-99

1610

PERS-311

20 January 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: LCDR [REDACTED], CHC, USN [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his original fitness reports for the following periods and replace them with supplemental fitness reports for the same period:

16 June 1996 to 31 October 1996

1 November 1996 to 31 October 1997

1 November 1997 to 15 October 1998

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed both the original and supplemental fitness reports in question to be on file. They are signed by the member acknowledging the contents of each and his right to submit a statement. The member did not desire to submit a statement.

b. The supplemental fitness reports raises several performance trait marks, revises block-41 Comments on Performance, and changed the member's promotion recommendation from "Must Promote to Early Promote" on the fitness reports ending 31 October 1996 and 31 October 1997. The member's promotion recommendation is the same on the fitness report for the period ending 15 October 1998.

c. Per reference (a), supplemental material must be submitted within two years of the ending date of the fitness report and be accompanied by a cover letter stating the changes and reason for submission of the supplemental report. The fitness report for the period ending 31 October 1996 was received and filed in error as it was submitted more than two years after the ending date of the report. Although it was filed in error we will not remove the fitness report.

d. The fact that the revision is a better report should have no bearing on whether the original is retained or removed. We provide reporting seniors with the facility to add material to fitness

reports already on file, not replace them. Substitution of the revised report for the original should only be approved in unusual circumstances. The original and revised reports are filed together with the letter of transmittal. They provide a complete picture of Lieutenant Commander [REDACTED] performance as first evaluated, and then after the reporting senior had the opportunity to reconsider.

e. Enhancement of chances for promotion is not sufficient reason to remove or change a fitness report.

f. The member does not prove the reports to be unjust or in error.

3. We recommend the member's record remain unchanged and the member's petition be forwarded to the Director, Active Officer Promotions, Appointments, and Enlisted Advancements Division (PERS-85) for comments on the member's request to convene a special selection board and removal of his failure to select to Commander (O-5).

[REDACTED]

Head, Performance  
Evaluation Branch

5770-09



DEPARTMENT OF THE NAVY  
BUREAU OF NAVAL PERSONNEL  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

5420  
Ser 85/0136  
3 Feb 00

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: LCDR [REDACTED] CHC, USN, [REDACTED]

Encl: (1) BCNR File

1. Enclosure (1) is returned, recommending disapproval of LCDR [REDACTED]'s request.
2. LCDR [REDACTED]'s request for removal of his failure of selection and special board consideration is without merit. His official record before the FY-00 Active-Duty Commander Staff Corps Promotion Selection Board was complete and included his valid 31 October 1996, 31 October 1997, and 15 October 1998 fitness reports. While supplemental reports for the period in question were submitted and accepted by BUPERS after the board's convening, removal of failure of selection cannot be supported. The original reports were not provided to the board in error and cannot be assumed as the basis leading to his non-selection. Further, if the original reports are removed it does not improve the promotion competitiveness of his record amongst his peers to any greater degree than the supplemental reports already provide.
3. LCDR [REDACTED] claim that promotion board members were not impartial is unfounded. Previously serving with an eligible does not bar a member from board membership and/or the capability of making an appropriate promotion decision. There is no reason to question the action of the legally constituted board.
4. The board had all the information required for promotion consideration and the records that were presented before the board provided an accurate, complete, and fair portrayal of his entire career and sufficient information upon which to make a promotion decision. Since board deliberations are secret, the exact reason LCDR [REDACTED] failed to select cannot be determined.
5. Recommend disapproval of his request for failure of selection removal and special board consideration.

[REDACTED]

BCNR Liaison, Officer Promotions and  
Enlisted Advancements Division